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ATTORNEYS FOR AZTECA MILLING L.P.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re:

MI PUEBLO SAN JOSE INC.,

Debtor.

Case No. 13-53893-ASW

Chapter 11

**MOTION OF AZTECA MILLING L.P.
FOR ALLOWANCE AND PAYMENT
OF ADMINISTRATIVE EXPENSE
CLAIM PURSUANT TO 11 U.S.C.
§ 503(B)(9)**

Azteca Milling L.P. ("Azteca") hereby files this *Motion for Allowance and Payment of Administrative Expense Claim Pursuant to 11 U.S.C. § 503(b)(9)* (the "Motion") and would respectfully show the Court as follows:

JURISDICTION AND VENUE

1. Pursuant to 28 U.S.C. §§ 157 and 1334, the Court has jurisdiction over this Motion and the relief requested herein. Pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B), and (O), this

1 Motion presents a core proceeding. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408
2 and 1409.

3 2. The statutory predicate for the relief requested herein is 11 U.S.C. §§ 503(a),
4 503(b)(9), and 507(a)(2).

5 **BACKGROUND**

6
7 3. Azteca was a supplier of goods to Mi Pueblo San Jose, Inc. (the “Debtor”) prior to
8 the commencement of this bankruptcy proceeding.

9 4. On July 22, 2013 (the “Petition Date”), the Debtor commenced the above-
10 captioned case by filing a voluntary petition for relief under Title 11 of Chapter 11 of the United
11 States Code (the “Bankruptcy Code”).

12 5. The Debtor is a retail grocery store chain. Prior to the Petition Date, Azteca sold
13 certain food products including corn flour (the “Goods”) to the Debtor, in the ordinary course of
14 the Debtor’s business, on a purchase order basis that the Debtor sells at its various stores.

15 6. The invoice summary, invoices, and bills of lading (attached hereto as **Exhibit A**)
16 demonstrate that Azteca provided the Goods to the Debtor, and that the Goods were received by
17 the Debtor during the 20 days before the Petition Date.

18 7. The total amount due to Azteca for the Goods shipped to and received by the
19 Debtor during the 20 days prior to the Petition Date is **\$119,519.31**.

20 8. The Debtor has not paid Azteca for the Goods.

21 **RELIEF REQUESTED**

22 9. Pursuant to 11 U.S.C. § 503(b)(9), after notice and a hearing, there shall be
23 allowed an administrative expense claim for “the value of any goods received by the debtor
24 within 20 days before the date of the commencement of a case under this title in which the goods
25 have been sold to the debtor in the ordinary course of such debtor’s business.”
26
27
28

1 10. The Debtor received the Goods provided by Azteca within 20 days before the
2 commencement of this case.

3 11. Azteca sold the Goods to the Debtor in the ordinary course of the Debtor's
4 business.

5 12. Therefore, Azteca requests the allowance and payment of its claim as an
6 administrative expense claim pursuant to 11 U.S.C. § 503(b)(9) and in accordance with the 20-
7 day claims process established by the Court in its order dated July 31, 2013 [Dkt No. 74]
8 (the "July 31 Order").

9
10 13. Azteca reserves its right to (A) request allowance and/or payment of any
11 additional administrative expenses that are or may become due during this case, (B) further
12 participate in the 20-day claims process ordered by the Court in its July 31 Order, and (C) file its
13 official proof of claim in this case for all outstanding pre-petition amounts due to it by the
14 Debtor.
15

16 14. The name and address where notices should be sent regarding this Motion is:

17 Katharine Battaia Clark
18 THOMPSON & KNIGHT LLP
19 1722 Routh Street, Suite 1500
20 Dallas, Texas 75201
21 Telephone: 214-969-1700
22 Email: katie.clark@tklaw.com

23 -and-

24 David Salazar, Sr. Director – Legal Services
25 GRUMA CORPORATION
26 1159 Cottonwood Lane
27 Irving, TX 75038
28 Telephone: 972-2325037
 Email: dsalazarc@gruma.com

WHEREFORE, Azteca respectfully asks this Court to enter an Order (A) allowing Azteca a Chapter 11 administrative expense claim pursuant to 11 U.S.C. § 503(b)(9) in the amount of **\$119,519.31**; (B) ordering the Debtor to pay such allowed administrative expense immediately as an undisputed claim pursuant to the provisions of the Code July 31 Order governing distributions; and (C) granting Azteca such other and further relief as this Court deems appropriate.

RESPECTFULLY SUBMITTED this 23rd day of August, 2013.

By: /s/ Bruce J. Zabarauskas

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ATTORNEYS FOR AZTECA MILLING L.P.

1 **CERTIFICATE OF SERVICE**

2 I, Katharine Battaia Clark, declare:

3 I am over the age of eighteen years and not a party to the within action. I am a member of
4 the bar of the State of Texas, and I am awaiting *pro hac vice* admittance in this Court. My
5 business address is Thompson & Knight LLP, 1722 Routh Street, Suite 1500, Dallas, Texas
6 75201.

7 On August 23, 2013, I served the document described as **MOTION OF AZTECA
8 MILLING L.P. FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE
9 CLAIM PURSUANT TO 11 U.S.C. § 503(B)(9)** in this action by placing a true and correct copy
10 thereof in a sealed envelope in the United States Mail, first class, postage prepaid on the parties
11 indicated below and by the Court's CM/ECF system on all parties consenting to service by same.

12 Court

13 Judge Arthur S. Weissbrodt
14 c/o Brook Esparza
15 United States Courthouse, Room 3035
16 280 South First Street
17 San Jose, CA 95113-3099

18 United States Trustee

19 Emily S. Keller, Esq.
20 Office of the United States Trustee
21 280 S. First Street, Suite 268
22 San Jose, CA 95113

23 Debtor

24 Mi Pueblo San Jose, Inc.
25 P.O. Box 3288
26 12 San Jose, CA 95156

Attorneys for Debtor

Heinz Binder, Esq.
Robert G. Harris, Esq.
David B. Rao, Esq.
Wendy W. Smith, Esq.
Roya Shakoori
Binder & Malter, LLP
2775 Park Avenue
Santa Clara, CA 95050

Special Counsel for Debtor

Wm. Thomas Lewis, Esq.
Roberston & Lewis
150 Almaden Boulevard, Suite 950
San Jose, CA 95113-2375

27 I declare under penalty of perjury that the foregoing is true and correct.

28 Executed on August 23, 2013 at Dallas, Texas.



Katharine Battaia Clark